

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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HASSAN CHUNN; NEHEMIAH McBRIDE;
AYMAN RABADI by his Next Friend Migdaliz
Quinones; and JUSTIN RODRIGUEZ by his
Next Friend Jacklyn Romanoff, individually
and on behalf of all others similarly situated,

Petitioners,

-against-

WARDEN DEREK EDGE,

Respondent.

Civil Action No.
20-CV-1590 (Kovner, J.) (Mann, M.J.)

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DECLARATION OF LIEUTENANT COMMANDER D. JORDAN, RN/BSN

In accordance with the provisions of Section 1746 of Title 28, United States Code, I, the undersigned, Lieutenant Commander D. Jordan, RN/BSN, do hereby make the following declaration, under penalty of perjury, pertinent to the above-styled cause:

1. I am currently employed by the United States Government, Federal Bureau of Prisons (“Bureau”), as the Quality Improvement/Infection Prevention Control Officer at the Metropolitan Detention Center (“MDC”) in Brooklyn, New York.

2. I submit this Declaration in response to the Court’s Order dated April 14, 2020 (Dkt. No. 43), requesting “documents containing protocols that govern when inmates or staff members are tested for COVID-19 and how a person at the MDC can request such a test.” The documents set forth herein, and as already produced in response to Administrative Order No. 2020-14, are responsive to Petitioners’ Document Request No. 1 regarding testing protocols.

3. With respect to COVID-19 specifically, I am involved on a daily basis in the identification, planning, and implementation of all Bureau directives for preventing the spread of COVID-19 at MDC Brooklyn. Through the course of my official duties, I have personal knowledge regarding the numerous measures, discussed in turn below, that have been implemented both Bureau-wide and at MDC Brooklyn in order to contain, mitigate, and manage the spread of COVID-19.

I. NATIONAL STEPS TAKEN BY BUREAU TO ADDRESS COVID-19

4. The Bureau's national guidance has undergone a number of changes in response to the evolving threat. The Bureau has established a COVID-19 resource section ("COVID-19 Resource Section") on its public webpage which is available at: <https://www.bop.gov/coronavirus/>. This webpage includes updates on the Bureau's response to COVID-19 and positive COVID-19 tests among inmates and staff at Bureau institutions nationwide.

5. The Bureau has issued a series of phases of its national response to the COVID-19 pandemic, which apply generally across all Bureau institutions, including the MDC. The Bureau has taken and is continuing to take significant measures in response to the COVID-19 pandemic in order to protect the safety and security of all staff and inmates, as well as members of the public.

6. In January 2020, the Bureau became aware of the first identified COVID-19 cases in the United States and quickly took steps to prevent its introduction and spread in Bureau institutions. The Bureau's response has occurred over six distinct "phases" to date. The Bureau will continue to modify and adjust its response as circumstances change, and at the guidance and direction of worldwide health authorities.

A. Action Plan for COVID-19 – Phase One

7. In January 2020, the Bureau began Phase One of its Action Plan for COVID-19. Phase One activities included, among other things, seeking guidance from the Bureau's Health Services Division regarding the COVID-19 disease and its symptoms, where in the United States infections were occurring, and the best practices to mitigate its transmission. *See* BOP 85-86. The Bureau's Health Services Division is responsible for medical, dental, and mental health (psychiatric) services provided to Federal inmates in Bureau facilities, including health care delivery, infectious disease management, and medical designations.¹ In addition, an agency task force was established, to begin strategic planning for COVID-19 Bureau-wide. This strategic planning included building on the Bureau's existing procedures for pandemics, such as implementing its pre-approved Pandemic Influenza Plan. *See* BOP 30-84; BOP 116-44. From January 2020 through the present, the Bureau has been coordinating its COVID-19 efforts with subject-matter experts both internal and external to the agency, including implementing guidance and directives from the World Health Organization (WHO), the Centers for Disease Control and Prevention (CDC), the Office of Personnel Management (OPM), the Department of Justice (DOJ), and the Office of the Vice President. *See* BOP 85-86; BOP 88-112.

B. Action Plan for COVID-19 – Phase Two

8. On March 13, 2020, the Bureau implemented Phase Two of its Action Plan. Phase Two put into place a number of restrictions across all Bureau facilities over a 30-day period, to be reevaluated upon the conclusion of that time period. Specifically, the Bureau suspended the following activities for an initial period of 30 days, with certain limited exceptions: social visits;

¹ https://www.bop.gov/about/agency/org_hsd.jsp.

legal visits; inmate facility transfers; official staff travel; staff training; contractor access; Volunteer visits; and tours.

9. During Phase Two, inmates were subjected to new screening requirements. Specifically, all newly arriving Bureau inmates were screened for COVID-19 symptoms and “exposure risk factors,” including, for example, if the inmate had traveled from or through any high-risk COVID-19 locations (as determined by the CDC), or had had close contact with anyone testing positive for COVID-19. *See* BOP 88-112. Asymptomatic inmates with exposure risk factors were quarantined, and symptomatic inmates with exposure risk factors were isolated and evaluated for possible COVID-19 testing by local Bureau medical providers.²

10. Staff were also subjected to enhanced health screening in areas of “sustained community transmission,” as determined by the CDC, and at medical referral centers. On March 19, 2020, MDC Brooklyn implemented this enhanced screening for staff and contractors at that time. The enhanced screening measures required all staff to self-report any symptoms consistent with COVID-19, as well as any known or suspected COVID-19 exposure, and further required all staff to have their temperature taken upon entry into any Bureau facility.

11. Finally, in addition to the measures listed above, the Bureau implemented national “modified operations” in order to maximize social distancing within Bureau facilities. These modifications included staggered meal and recreation times in order to limit congregate gatherings. Additionally, the Bureau established a set of quarantine and isolation procedures for known or potential cases of COVID-19. *See* BOP 85-86.

² Throughout this declaration, “isolation” refers to a symptomatic inmate being confined to a single cell within a designated housing unit or medical unit. “Quarantine,” on the other hand, refers to asymptomatic inmates who may remain within their assigned housing units, together, but may not interact with staff or inmates outside of these housing units.

C. Action Plan for COVID-19 – Phase Three

12. On March 18, 2020, the Bureau implemented Phase Three of the COVID-19 Action Plan for Bureau locations that perform administrative services (*i.e.*, non-prison locations), which followed DOJ, Office of Management and Budget, and OPM guidance for maximizing telework. In this phase, individuals who had the ability to telework and whose job functions did not require them to be physically present were directed to begin teleworking.

13. Additionally, and in accordance with the Pandemic Influenza contingency plan, all cleaning, sanitation, and medical supplies were inventoried to ensure an adequate supply. *See* BOP 85-86; BOP 30-84. The MDC currently has cleaning, sanitation, and medical supplies.

D. Action Plan for COVID-19 – Phase Four

14. On March 26, 2020, the Bureau implemented Phase Four of its Action Plan. In Phase Four, the Bureau revised its preventative measures for all institutions. Specifically, the agency updated its quarantine and isolation procedures to require all newly admitted inmates to the Bureau, whether in areas of sustained community transmission or not, to be assessed using a screening tool and temperature check (further explained below). This screening tool and temperature check applied to all new intakes, detainees, commitments, prisoners returned on writ from judicial proceedings, and parole violators, regardless of their method of arrival. Thus, all new arrivals to any Bureau institution—even those who were asymptomatic—were placed in quarantine for a minimum of 14 days or until cleared by medical staff. Symptomatic inmates were placed in isolation until they tested negative for COVID-19, or were cleared by medical staff as meeting CDC criteria for release from isolation. *See* BOP 85-86.

E. Action Plan for COVID-19 – Phase Five

15. On March 31, 2020, the Director of the Bureau ordered the implementation of Phase

5 of its COVID-19 Action Plan, which took effect on April 1, 2020. Specifically, the Director ordered the following steps to be taken:

- A. For a 14-day period, inmates in every institution will be secured in their assigned cells/quarters to decrease the spread of the virus.
- B. During this time, to the extent practicable, inmates should still have access to programs and services offered under normal operating procedures, such as mental health treatment and education.
- C. In addition, the Bureau is coordinating with the United States Marshals Service (USMS) to significantly decrease incoming movement during this time.
- D. After 14 days, this decision will be reevaluated and a decision made as to whether or not to return to modified operations.
- E. Limited group gathering will be afforded to the extent practical to facilitate commissary, laundry, showers, telephone, and Trust Fund Limited Computer System (TRULINCS³) access.

See BOP 87.

16. Phase Five was implemented at MDC Brooklyn. For a 14-day period beginning April 1, 2020:

- All inmates were confined to their living quarters for the majority of the day.
- Meals, commissary items, laundry, recreation materials, education

³ TRULINCS is the internal Bureau computer and electronic message platform that inmates use to communicate with staff in the institutions and individuals in the community. Through this platform, inmates receive updates, notices, and can read inmate bulletins posted on the system by Bureau staff.

materials, medical services and psychology services were delivered directly to inmates' housing units.

- Inmates were released from their cells in small groups to engage in activities such as showers, exercise, phones, and TRULINCS. During these time periods, inmates have been directed to maintain appropriate physical distancing.

F. Action Plan for COVID-19 – Phase Six

17. On April 13, 2020, the Director of the Bureau ordered the implementation of Phase 6 of its COVID-19 Action Plan. Specifically, the Director ordered an extension of the nationwide action in Phase 5, which applies to medical screening, limited inmate gathering, daily rounds, limited external movement, and fit testing, until May 18, 2020.

18. Phase Six has been implemented at MDC Brooklyn.

II. STEPS TAKEN AT MDC BROOKLYN TO ADDRESS COVID-19

19. In addition to the steps taken at the national level, MDC Brooklyn itself has also taken a number of additional measures in response to the COVID-19 pandemic to prevent the introduction and spread of COVID-19 into its facility, including providing inmate and staff education; conducting inmate and staff screening; putting into place testing, quarantine, and isolation procedures in accordance with Bureau policy and CDC guidelines; ordering enhanced cleaning and medical supplies; and taking a number of other preventative measures.

A. Inmate and Staff Education relating to COVID-19

20. From the outset of the COVID-19 pandemic, MDC Brooklyn officials have provided regular updates to inmates and staff regarding the virus and the Bureau's response, and have educated inmates and staff regarding measures that they themselves should take to stay

healthy.

21. For example, staff have conducted town hall meetings with the inmate population advising them of the symptoms of COVID-19, instructing them to self-monitor for COVID-19 symptoms, and to immediately report such symptoms to sick call. The inmate population and staff members have been told best practices regarding personal hygiene to prevent the spread of COVID-19. Information sheets are posted in numerous locations around MDC Brooklyn, including inmate housing units, the front lobby, on restroom doors, and within all departments. *See* BOP 113.

22. Inmates have also been notified of this same information via information bulletins posted on TRULINCS in both English and Spanish. Medical providers have educated MDC Brooklyn inmates on COVID-19 symptoms and safety measures. Department heads, Associate Wardens, and Warden also conduct rounds in the housing units, and are available to answer questions from inmates regarding personal hygiene practices.

23. Medical staff have also been trained to appropriately don and remove Personal Protective Equipment (PPE). This same training has also been made available to all staff at the institution.

B. Screening for COVID-19 at MDC Brooklyn

24. Due to the “Stay in Shelter” order implemented on April 1, 2020, inmate movement at MDC Brooklyn is currently highly restricted. However, the following screening measures for both inmates and staff are currently in place, and will remain in effect even after the “Stay in Shelter” order is lifted, until Bureau officials determine that they are no longer necessary to prevent and/or manage the introduction or spread of COVID-19 in MDC Brooklyn.

1. Inmates

25. As explained above, MDC Brooklyn has been screening inmates for COVID-19 since March 19, 2020.

26. In accordance with the Bureau's Action Plan, few new inmates are expected to arrive at the institution in the near future. As noted above, inmate transfers between institutions and air lifts have been canceled, and MDC Brooklyn is not currently accepting detainees or inmates who voluntarily surrender. Inmates who arrived after March 19, 2020, as well as inmates who may be sent to the institution in the future, were or will be screened immediately upon their arrival in accordance with the following screening protocols.

27. When inmates arrive, they are met by medical providers from the Health Services Department, who conduct an initial screening in a designated area at MDC Brooklyn separate from other staff and inmates. The medical providers wear PPE during the screening process.

28. Inmates are screened for symptoms of COVID-19 (including fever, cough, and shortness of breath), as well as for "exposure risk factors," including whether the inmate has traveled from, or through, any locations identified by the CDC as increasing epidemiologic risk within the past 14 days, or has had close contact with anyone diagnosed with COVID-19 in the past 14 days. *See* BOP 114. The screening takes place in a single, controlled area separate and apart from other inmates and prison staff.

29. Following this initial screening, inmates are escorted to an isolation/quarantine unit at MDC Brooklyn. There, they are quarantined for 14 days to ensure that they do not develop any symptoms consistent with COVID-19. If they do not have symptoms or exposure risk factors, they are placed in a quarantine unit. If they do have symptoms or exposure risk factors, they are placed in a separate isolation unit. The isolation unit is used for all symptomatic inmates, inmates

with exposure risk factors, and inmates with a pending COVID-19 test. In these quarantine and isolation units, all staff must wear PPE; inmates in quarantine or isolation are required to wear a surgical mask.

30. After the expiration of 14 days, and upon medical clearance, inmates may be released into the general population,

31. This initial screening procedure at MDC Brooklyn allows for screening to occur in a controlled environment, and further ensures the rest of the inmate population is not exposed to newly-arrived inmates until they are properly screened and cleared by Health Services Department medical providers.

32. In addition to screening incoming inmates, MDC Brooklyn is also taking a number of measures to screen its current resident inmate population.

33. The Health Services Department reviewed inmate medical records in order to determine which individuals at MDC Brooklyn were considered “high risk” for complications due to COVID-19 pursuant to CDC guidelines.⁴ These guidelines can be found at: <https://www.cdc.gov/coronavirus/2019-ncov/need-extra-precautions/groups-at-higher-risk.html>. Per CDC guidance, “high-risk” individuals include those over 65 and those with significant underlying medical conditions, such as chronic lung disease, moderate to severe asthma, liver disease, and diabetes.

34. In order to identify which inmates at MDC Brooklyn should be considered “high risk,” staff searched the Bureau’s medical records for (1) all inmates aged 55 and over; and (2) all inmates who have been diagnosed with a condition identified by the CDC as being “high risk.” MDC Brooklyn searched for inmates 55 and over, rather than 65 and older, in an abundance of

⁴ To be clear, there is a greater risk of complications from COVID-19 if the disease is contracted; there is no additional risk of contracting the disease.

caution and to be conservative in its approach to assessing risk.

35. All inmates are encouraged to self-monitor and to report symptoms of illness to unit staff either orally or via a written request to staff or cop-out. The Health Services Department, which is staffed with a full complement of medical providers, are required to be present in each MDC Brooklyn housing unit at least twice per day in order to conduct sick call and pill line. The presence of medical staff affords inmates further opportunity to report any medical concerns. In addition, unit staff and other department representatives (including staff from education, commissary, psychology, and recreation) are required to conduct daily rounds in each MDC Brooklyn housing unit to ensure the inmate population remains safe and healthy. If an inmate has an issue that he wants to bring to the staff's attention, he can do so via a written request, commonly known as a cop-out, at any time, or during these rounds with staff.

36. Any inmate who presents with symptoms consistent with COVID-19 will be evaluated by a medical provider. Based upon this evaluation, a determination will be made whether isolation and/or testing is appropriate. As noted above, certain units at MDC Brooklyn have been designated as the isolation unit for inmates who are symptomatic and/or test positive for COVID-19.

37. If any inmate is isolated, the inmates that were housed in the same housing unit with him will be quarantined pending results of a COVID-19 test provided to the inmate, or 14 days, whichever is sooner.⁵

38. Inmates may also be placed in a quarantine or isolation setting if they are exposed to a person with COVID-19, where they will be monitored daily for a period of at least 14 days. In accordance with CDC guidelines, quarantine or isolation will only be discontinued once 14 days

⁵ Quarantine will be lifted sooner if the test results come back negative.

elapse without the inmate(s) developing new symptoms.

39. MDC Brooklyn medical providers are prioritizing immediate medical care for anyone who claims symptoms indicative of a COVID-19 infection.

2. Staff and Visitors

40. Since March 19, 2020, all individuals entering MDC Brooklyn (including staff, delivery drivers, or any other visitors) are directed to a single point of entry. Every person entering the institution must undergo a health screening upon entry. This includes having his or her temperature taken and being asked a number of questions to evaluate his or her risk of exposure, as well as whether he or she has been experiencing any symptoms of illness. *See* BOP 145.

41. The individuals conducting this health screening at the front entrance of MDC Brooklyn are authorized to deny entry to any individual if he or she has a body temperature of 100.4 degrees Fahrenheit, or above, or reports other symptoms consistent with COVID-19 (although they may consult with MDC Brooklyn medical providers in advance of the decision to deny entry).

42. MDC Brooklyn employees have also been educated regarding the importance of staying home if they are feeling ill, and are required to self-report any COVID-19 exposure (known or suspected) as well as any positive COVID-19 test. If a staff member is tested for COVID-19, they are not permitted to return to work until after receiving the results of the test.

C. COVID-19 Testing at MDC Brooklyn

43. The CDC has identified four “priority levels” for testing individuals with a suspected COVID-19 infection. *See* BOP 115. Priority levels one through three include hospitalized patients and healthcare workers with symptoms (Priority Level 1); symptomatic patients in long-term care facilities, individuals 65 years or older, individuals with underlying

conditions, and first responders (Priority Level 2); and symptomatic critical infrastructure workers, individuals who do not meet any of the criteria in Priority Levels 1 or 2, healthcare workers and first responders, and individuals with mild symptoms in communities experiencing high numbers of COVID-19 hospitalizations (Priority Level 3). *Id.* The fourth, or non-priority level, is for individuals without symptoms. *Id.*

44. The CDC has made clear that “[n]ot everyone needs to be tested for COVID-19,” and “decisions about testing are at the discretion of state and local health departments and/or individual clinicians.” *See* cdc.gov/coronavirus/2019-ncov/symptoms-testing/testing.html.

45. At MDC Brooklyn, there are not enough tests to test every inmate. Consequently, the decision whether to test an inmate for COVID-19 is made by Bureau medical providers based on a number of criteria, which may include, but is not limited to: (1) the nature and severity of the symptoms; (2) the inmate’s potential exposure to COVID-19; (3) whether the inmate is considered “high-risk,” and (4) whether the inmate is on a work detail, such as food service, that requires the inmate to interact with other inmates or staff.

46. To date, five MDC Brooklyn inmates have tested positive for COVID-19. There are 16 staff members who have tested positive for COVID-19.

47. MDC Brooklyn has swabs and limited medical supplies at hand to test inmates for COVID-19. MDC continues to work diligently with local health providers, including Quest Diagnostics, to obtain as many COVID-19 tests as possible. Because of the shortage of tests, testing is currently reserved for those meeting the criteria set forth in ¶ 45 above. But by enforcing the aforementioned safeguards, particularly with respect to any at-risk inmates, or inmates and staff who may have been exposed, MDC aims to ensure that any asymptomatic carriers of COVID-19 do not unwittingly infect any other inmates or staff.

48. MDC Brooklyn uses isolation to separate inmates who present with symptoms consistent with COVID-like illness from quarantined asymptomatic or general population inmates. Inmates have surgical masks to wear when interacting with staff or leaving the assigned cell and their proximity to staff and other inmates is minimized. Medical staff determine if COVID-19 testing is necessary based on applicable guidelines and community standards. If the inmate's condition merits hospitalization, the inmate will be transported to a local hospital.

49. MDC Brooklyn uses quarantine to separate asymptomatic inmates who have been in contact with symptomatic inmates during the incubation period, which is up to 14 days for COVID-19. Inmates are housed together during this 14-day period with other asymptomatic inmates in a housing unit. Steps are taken to not add or introduce new inmates to a quarantine housing unit after the 14-day quarantine clock has started. At the end of the 14-day period, the inmates may be released from quarantine if no inmates develop COVID-19 symptoms or are diagnosed with COVID-19. If additional inmates present with symptoms during the incubation period, these symptomatic inmates are isolated and the 14-day quarantine period begins anew. Inmates receive twice daily temperature checks and if any symptoms are reported, they are documented. If an inmate becomes symptomatic or has a temperature of greater than or equal to 100.4 F., the inmate is placed in isolation.

50. Pursuant to Bureau Program Statement 6031.04, Patient Care, an inmate may request a clinical service, such as testing, through medical staff who will determine if the clinical service is medically necessary. *See* BOP 146-203.

D. Additional Measures to Combat COVID-19.

51. All inmates have access to sinks, water, and soap at all times. New inmates admitted to MDC Brooklyn automatically receive soap, and all inmates may receive new soap upon request.

For inmates without sufficient funds to purchase soap in the commissary, soap is provided at no cost to the inmate. MDC Brooklyn inmates are able to wash their clothing and linens twice weekly.

52. Second, all common areas in inmate housing units are cleaned daily, and are typically cleaned by inmate orderlies multiple times throughout the day, with a designated disinfectant known to kill human coronavirus. MDC Brooklyn has made this disinfectant available to all inmates so that they may use it to clean their own living areas on a regular basis. Common areas outside inmate living areas, including the MDC Brooklyn, lobby, bathrooms, cafeteria, etc., are also cleaned with the same disinfectant on a daily basis (and often multiple times per day).

53. Each housing unit has been stocked with cleaning supplies for use by inmate orderlies and other inmates to clean both the common areas and their individual housing areas on a daily basis. Inmates are not provided with hand sanitizer due to security concerns. Specifically, inmates are not permitted to have access to alcohol and products containing alcohol because inmates may attempt to remove and consume the alcohol, thereby causing health and safety concerns for inmates and staff.

54. Staff have regular, consistent access to soap and hand sanitizer. Soap is located in staff restrooms and hand sanitizer is located in various staff common areas.

55. Correctional staff have been provided protective equipment to be used in appropriate locations throughout MDC Brooklyn such as quarantined areas, isolation units, and screening sites. MDC Brooklyn has sufficient PPE on hand, including N-95 respirator masks, surgical masks, and rubber gloves, to meet its current and anticipated needs, as well as the ability to order additional PPE should the need arise.

56. On April 5, 2020, all inmates and staff were provided protective face masks for daily use. They were provided new masks on April 12, 2020.

III. CONCLUSION

57. The Bureau and MDC Brooklyn remain flexible in their ability to receive guidance from the CDC and other health organizations and to modify their actions to best respond to this pandemic, according to the quickly shifting needs on the ground.

58. Other than the documents referenced above, produced herewith, and as produced to the Court in response to Administrative Order 2020-14, and upon information and belief, there are no additional documents relating to “testing protocols” at the MDC at this time.

Pursuant to the provisions of 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my information, knowledge, and belief.

Executed on this 15th day of April 2020, in Brooklyn, New York.



LCDR D. Jordan, BSN, RN
IOP/IDC Coordinator
MDC Brooklyn

LCDR D. Jordan, RN, BSN
Quality Improvement/Infection Prevention
Control Officer
United States Public Health Service
Federal Bureau of Prisons
MDC Brooklyn